

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ELIAS GUERRA	)	
	)	
v.	)	CIVIL ACTION
	)	No. 05-10440-PBS
UNITED STATES OF AMERICA	)	
	)	

**RESPONSE TO COURT'S REQUEST  
TO ADDRESS "SHEPHARD CLAIM"**

Defendant Elias Guerra's ("Guerra") §2255 Petition does not raise any claim under, and is not implicated by, Shepard v. United States, 544 U.S. 13 (2005) for the following reasons.

1. Guerra was not sentenced under the Armed Career Criminal Act (ACCA) (as was Shephard) or, as he claims, as a "career offender". Guerra was sentenced based on his conviction for illegal reentry of a previously deported alien and his undisputed criminal record. (See Guerra's PSR, attached as Exhibit 2 to the government's opposition to his Petition).

2. Guerra made no objection to his criminal record as set forth in the PSR. (See Exhibit 2 to the government's opposition to Guerra's Petition at p. 18).

3. The Court calculated Guerra's guideline range, in part, based on the undisputed fact of conviction(s) in his criminal record. See Guerra's PSR at ¶¶ 22, 30, 32 and the Addendum.

4. The Court neither relied upon nor consulted any underlying documents (for example a complaint application or police report, as in Shephard) to determine that Guerra had prior convictions for a felony crime of violence (pursuant to U.S.S.G.

§2L1.2(b)(1)(A)) resulting in an increase guideline offense level. (Guerra's undisputed qualifying convictions -- Assault and Battery On A Police Officer; Assault and Battery With A Dangerous Weapon; Assault and Battery -- are all per se "crime(s) of violence"). See Guerra's PSR at ¶¶ 22, 30 and 32.

5. Guerra's Petition is also untimely. See the government's opposition, *passim*.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ CHRISTOPHER F. BATOR  
Assistant U.S. Attorney

Date: May 3, 2006

CERTIFICATE OF SERVICE

I, CHRISTOPHER F. BATOR, certify that I have served a copy of the above upon Elias Guerra, Federal Reg. No. 24777-038, FCI Ray Brook, P.O. Box 9007, Ray Brook, NY 12977 by first class mail.

/s/CHRISTOPHER F. BATOR  
Assistant U.S. Attorney

Date: May 3, 2006